

Mr. Steven Garfinkel  
Director  
Information Security Oversight Office  
General Services Administration  
Washington, DC 20405

Dear Steve:

In response to your letter of 23 February, I am providing herewith some suggestions for revision of the language of Executive Order 12065. The enclosed suggestions concentrate on Section 3-4 "Systematic Review for Declassification."

Three major changes are incorporated in these revision suggestions. The first of these is done with very great reluctance. You will recall that we strongly championed President Carter's proposal in 1977 to advance the systematic review from 30 years to 20 years. We were convinced then, and remain convinced, that a great deal of valuable historical information in the custody of the National Archives could be released to the public in that time frame. We were also aware, however, that such an effort would require far greater resources than had been devoted to this program between 1972 and 1978. Our resource requirements to meet the new 20-year systematic review objective by 1988 were submitted to the Office of Management and Budget every year since 1978 with only minor enhancements of our personnel ceiling and appropriation. In view of the presently reduced resources and those likely to be available to NARS in the foreseeable future, we reluctantly recommend that this Government revert to the earlier program of reviewing for declassification the records of continuing value and the donated historical materials when they become 30 years old. This change would permit us to develop an efficient and effective program to review both U.S. and foreign Government originated classified information at the same time.

We also recognize that certain agencies object to the existing requirement for them to review records that are presently in their custody but which are scheduled to be accessioned into the National Archives. The language changes suggested in Section 3-401 on the enclosed pages would remove this burden from other agencies and make ongoing declassification review exclusively a NARS program.

Review of records in the recent past under the 20-year systematic review provisions of the present order has proved to be very burdensome and frequently results in extensive withdrawal of records and costly coordination with responsible agencies. The second major change that we seek,

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therefore, is to grant the National Archives the authority to postpone the systematic review requirement in those cases where we determine that the entire series or subseries of records has a very high incidence of material that would require withdrawal and continued protection. If we are permitted to make such determinations, we will be able to concentrate our efforts on those records of greatest public interest where we can realize a reasonable return on the expenditure of our efforts and at the same time assure the declassification of most 30-year-old records no longer requiring protection in the interest of national security. Documents in file series and sub-series that are set apart from 30-year systematic review would, of course, be subject to review in response to Freedom of Information and Mandatory Review requests. Such file series and subseries also would be reconsidered for review as guidelines are modified and as additional guidelines are received.

The third major change concerns extension of classification beyond 30 years. The present provision (extending classification beyond 20 years) appears as a part of Section 3-4 "Systematic Review for Declassification." This has caused delays and confusion because agency heads appear to be the exclusive extension authority for documents encountered under systematic review programs while other officials of those agencies are authorized to extend protection for classified information requested under the Freedom of Information Act and the Mandatory Review Provision of the order. By moving this provision to follow the Mandatory Review Section and elevating it to the status of a separate section the present anomaly can be eliminated.

We have also incorporated four minor changes in the language of the National Archives proposals. In our opinion, the authority to extend protection beyond 30 years should be delegated to a "senior agency official" and not be limited to "agency heads" as is now required under Section 3-401 of Executive Order 12065. Agency heads, because of other responsibilities and duties, are unable to act promptly on these matters and consequently cause unnecessary delays in program management and day-to-day operations. Agency heads are entirely dependent upon assistants or committees to make recommendations in these matters. We are convinced that by delegating this responsibility, the agency head can assure that a single key official will have ultimate as well as overall responsibility for the direction of the program within his agency and that delays will be minimized.

We also recommend deletion of the requirement that the date for automatic declassification or re-review be marked on the document. All items withdrawn are listed and under control in our ADP system. This system generates annual lists of the items requiring re-review or refiling subsequent to automatic declassification. Marking, therefore, is redundant and a burden we cannot afford to carry with the reduction in resources we face. Moreover, we object to placing an interim, ineradicable marking on historically important documents, many of which may also have exhibit value.

We recommend that the date for required re-review be set at 20 years instead of at the present 10 years after the date of original review. Adopting this

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proposal also removes an administrative burden in a time of reduced resources. The number of documents which agencies would determine could be automatically declassified after 20 years should be appreciably greater than the number presently being marked for declassification after the present 10 years. Finally, we have removed the word "systematic" from the order. As revised in these proposals and with reduced resources the future program should not be characterized by that term.

I have designated Mr. Alan Thompson to represent me in any further meetings or discussions on the matter of revision of Executive Order 12065 or the implementing Directive. We look forward to an opportunity to comment on other draft prospective amendments.

Sincerely,

ROBERT M. WARNER  
Archivist of the United States

Enclosure

CC:  
Official File - NND

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Day File - NND

EAThompson/rmg 3-24-81

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NARS PROPOSALS FOR  
AMENDING E. O. 12065

3-4 Systematic Review for Declassification.

3-401. Classified information constituting permanently valuable records of the Government, which have been accessioned into the National Archives of the United States pursuant to as-defined-by 44 U.S.C. 2103, and classified information in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C. 2107 or 2107 note, shall be reviewed for declassification by the Archivist of the United States as it becomes thirty twenty years old. This review requirement may be waived for those series and subseries of records and files which, because of their continued sensitivity, are not readily declassified. [See below for proposed amendments to remaining portion of this subsection.]

3-402. ~~Within 180 days after the effective date of this Order~~ The agency heads listed in Section 1-2 and the heads of agencies which had original classification authority under prior orders shall, after consultation with the Archivist of the United States and review by the Information Security Oversight Office, issue and maintain guidelines for systematic declassification review covering thirty- twenty year old classified information under their jurisdiction. These guidelines shall state specific limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed item-by-item to determine whether continued protection beyond thirty twenty years is needed. These guidelines shall be authorized for use by the Archivist of the United States and may, upon approval of the issuing authority, be used by any agency having custody of the information. All information not identified in these guidelines as requiring review and for which a prior declassification date has not been

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established shall be declassified automatically at the end of thirty twenty years from the date of original classification.

3-403. [No changes.]

3-404. Foreign government information shall be exempt from automatic declassification and twenty-year systematic review. Unless declassified earlier, such information shall be reviewed for declassification thirty years from its date of origin. Such review shall be in accordance with the provisions of Section 3-3 and with guidelines developed by agency heads the Information Security Oversight Office in consultation with agency heads and the Archivist of the United States and, where appropriate, with the foreign governments concerned. These guidelines shall be authorized for use by the Archivist of the United States and may, upon approval of the issuing authority Director of the Information Security Oversight Office, be used by any agency having custody of the information.

3-405. ---Transition to systematic review at twenty years shall be implemented as rapidly as practicable and shall be completed no more than ten years from the effective date of this Order.

3-5. [No changes.]

3-6. Downgrading. [Renumber as 3-7.]

3-6. Extending Classification Beyond Thirty Years.

3-601. Agency heads listed in Section 1-2 and officials designated by the President pursuant to Section 1-201 of this Order may extend classification beyond thirty twenty years, but only in accordance with Sections 3-3 and 3-402. This authority may not be delegated to a senior agency official.

When classification is extended beyond thirty twenty years, a date no more

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than twenty ten years later shall be set for declassification or for next review. ~~This date shall be marked on the document.~~ Subsequent reviews for declassification shall be set at no more than ten-year intervals.

3-602. The Director of the Information Security Oversight Office may extend the period between subsequent reviews for specific categories of documents or information.

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